UIdaho Law
Digital Commons @ UIdaho Law

Idaho Supreme Court Records & Briefs

10-1-2013

McHugh v. Reid Appellant's Reply Brief Dckt. 40886

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation
"McHugh v. Reid Appellant's Reply Brief Dckt. 40886" (2013). *Idaho Supreme Court Records & Briefs*. 4309.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/4309

This Court Document is brought to you for free and open access by Digital Commons @ UIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

CASE NO. 40886-2013

IN THE SUPREME COURT OF THE STATE OF IDAHO

BARRY McHUGH
KOOTENAI COUNTY PROSECUTING ATTORNEY

Plaintiff-Respondent,

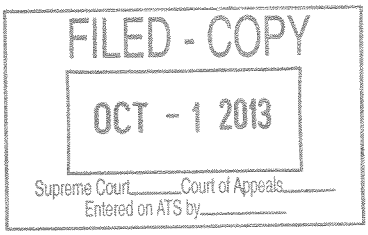
vs.

ONE BLUE 2007 TOYOTA FJ CRUISER, VIN NO. JTEBU11F470014172, AND ONE THOUSAND, SEVEN HUNDRED DOLLARS AND ZERO CENTS ($1,700.00) OF LAWFUL US CURRENCY

Defendant-Appellant.

DEFENDANT-APPELLANT'S REPLY BRIEF

Appeal from the District Court of the First
Judicial District for Kootenai County
Kootenai County Case No. CV-12-00672
(Honorable Benjamin Simpson, District Judge)



NICOLAS V. VIETH
Bar Nos. ID 8166 / WA 34196
VIETH LAW OFFICES, CHTD.
912 East Sherman Avenue
Coeur d' Alene ID 83814
Telephone: 208-664-9494
Facsimile: 208-664-9448
Email: nick@viethlaw.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES: **PAGE NO.**

STATE STATUTES: **PAGE NO.**

INTRODUCTION

NATURE OF THE CASE

The Reids (hereinafter "Claimants") do not appeal the Stipulated Judgment of Forfeiture as Respondents suggest. Brief of Respondent, p. 1. Claimants appeal the Partial Summary Judgment entered by the district court on January 9th, 2013, in which the Honorable Benjamin Simpson awarded Respondent "Judgment of Forfeiture against any interest of Claimants Jeffrey A. Reid and Sandra M. Snyder-Reid in one blue 2007 Toyota FJ Cruiser, VIN No. JTEBU11F470014172[.]" R. Vol. 1, p. 228.

On January 9th, 2013 the district court granted the State's motion for summary judgment insofar as it requested forfeiture of the Claimants' vehicle; the court simultaneously denied the portion of the State's motion which requested forfeiture of $1,700. R. Vol. 1, p. 220-21. Subsequent to this, the State argued for costs associated with the summary judgment motion, and ultimately the parties agreed to drop all remaining claims and motions against one another, and entered into a stipulated judgment on these remaining claims. R. Vol. 1, p. 247.

///

///

///

ARGUMENT

A. CLAIMANTS DO NOT APPEAL THE JUDGEMENT ENTERED BY CONSENT OF THE PARTIES AND THUS ARE NOT PRECLUDED FROM EXERCISING THEIR RIGHT TO APPEAL.

Claimants do not appeal the judgment entered by consent of the parties and thus are not precluded from exercising their right to appeal. The State mistakenly assumes that the present appeal is in regard to the Stipulated Judgment of Forfeiture entered on February 21, 2013. R. Vol. 1, p. 255. Contrary to this assumption, Claimants have made clear that they appeal the Partial Summary Judgment that occurred nearly a month and a half earlier on January 9th, 2013. R. Vol. 1, p. 228; Defendant-Appellant's Opening Brief, pp. 12, 20 (explaining that "the district court erred by granting partial summary judgment").

As authority for its position, the State cites *Nashville, Chattanooga & St. Louis Ry. v. United States,* 113 U.S. 261 (1885), which states: "a decree, which appears by the record to be ***rendered by consent,*** is always affirmed" and is not subject to appeal. Brief of Respondent, p. 5 (emphasis added). Notably, the Partial Summary Judgment that is the subject of this appeal could not have conceivably been ***rendered by consent*** by virtue of the fact that it was the result of a contested motion. *See* R. Vol. 1, p. 198 (Objection to State's Motion for Summary Judgment).

Directly on point is *Taylor Brands, LLC v. GB II Corp.*, 627 F.3d 874 (Fed. Cir. 2010). In *Taylor* the district court granted respondent's motion for summary judgment, finding that appellee did not infringe respondent's patent. *Id* at 875-76. Thereafter, the parties stipulated to a final judgment discharging their remaining claims. *Id* at 876. The stipulated judgment included the language of the summary judgment order, reading: "*with the parties' consent*, it is hereby ordered and adjudged that: a) Defendant has not infringed U.S. Patent No. 6,651,344 ..." *Id* emphasis in original). The party losing the summary judgment motion thereafter appealed the summary judgment decision. *Id.*

Just as the State argues in the case before this Court, the respondent in *Taylor* argued that the appellee had waived its right to appeal due to signing a stipulated judgment containing the same language as the interlocutory summary judgment order. *Id* at 877. In rejecting this position, the court explained:

> Of course, the fact that some collateral issues were not resolved by a dispositive interlocutory order indicates that [appellant] consented to the substance of the judgment to the extent that it extended beyond carrying the summary judgment order into effect. [Appellant] has thus waived its right to contest any such collateral issues on appeal by failing to expressly reserve that right. However, *because [appellant] clearly consented to only the form of the judgment insofar as it effectuates the summary judgment order, [appellant] has not waived its right to appeal the summary judgment order itself or any issues addressed therein ... .*

Id at 879 (emphasis added). In coming to this conclusion, the court in *Taylor* relied on the Supreme Court of the United States' decision in *Thomsen v. Cayser*, stating

that this case stood for the proposition that "stipulated judgments do not bar an appeal of the underlying judgment." *Id* at 877 (citing *Thomsen v. Cayser*, 243 U.S. 66, 83 (1917)).

Because Claimants have unequivocally made clear that they are appealing the summary judgment order which forfeited the vehicle to the State "against any interest of Claimants Jeffrey A. Reid and Sandra M. Snyder-Reid in one blue 2007 Toyota FJ Cruiser, VIN No. JTEBU11F470014172", and not the stipulated judgment, Claimants have not waived their right to appeal. R. Vol. 1, p. 228.

B. RESPONDENT NEGLECTS TO REBUT A MULTITUDE OF FACTS THAT WERE BEFORE THE DISTRICT COURT AND MISREPRESENTS THE AVAILABILITY OF EVIDENCE FOR EXCESSIVE FINES ANALYSIS.

Respondent neglects to rebut a multitude of facts that were before the district court, and misrepresents the availability of evidence for an excessive fines analysis. Among the facts available to the district court are the Reids' charges, guilty pleas, and sentences for the connected criminal cases. R. Vol. 1, pp. 130, 143. Further, the court was presented with their motives in committing their crimes, R. Vol. 1, p. 108 para. 26. The Reids also specifically laid out the hardship they experience because of the loss of this vehicle, R. Vol. 1, p. 162, and the monetary burden this loss has continued to impose. R. Vol. 1, p. 176.

Beyond the presence of these facts, the absence of facts similarly informs

excessive fines analysis. Specifically, the Reids are not purported to be drug dealers, gang members, or violent individuals. They do not derive a profit from their involvement with marijuana, nor do they involve anyone in the outside community with their marijuana affairs.

As Respondent aptly points out, the excessive fines analysis is comprised of many, many factors, and the suggested "value" of the vehicle is not solely an evaluation of its monetary worth. Brief of Respondent, p. 9. Claimants raised the issue of excessive fines analysis in the case below and made the court aware of significant evidence to support a denial of summary judgment with regard to this issue. It is now seasonable for this Court to review whether the district court's determination was appropriate in light of this evidence.

C. RESPONDENT IS NOT ENTITLED TO ATTORNEY FEES.

Interestingly, Respondent vehemently denies that Claimant's adverse party in this case can be properly characterized as "the State." Brief of Respondent, p. 2, n. 4. Then, Respondent goes on to argue that because the Kootenai County Prosecuting Attorney's office filed the complaint, that makes the "state agency or political subdivision" a party to the case, as required for an award of attorney's fees under Idaho Code § 12-117(1). Brief of Respondent, p. 15. The Prosecutor's Office is no more a party to this appeal than is counsel for Claimants.

In addition to this inconsistency, Respondent similarly fails to establish that

Claimant's acted without a reasonable basis in law or fact. The statute requires the "losing party to have acted frivolously or without foundation before fees may be awarded." *City of Osburn v. Randel*, 152 Idaho 906, 910, 277 P.3d 353, 357 (2012). Quite the contrary, Claimants have presented this court with ample evidence supporting their position and a significant volume of authority challenging the Respondent's position. *See generally* Defendant-Appellant's Opening Brief.

CONCLUSION

Claimants have not waived their ability to appeal the partial summary judgment entered by the district court; there are a plethora of facts established in the record from which this Court will find that the forfeiture of the Claimants' vehicle is excessive; and Claimants do not bring the current appeal without basis in law or fact, and the State should not be awarded attorney's fees. For the above mentioned, it is therefore requested that this court reverse the district court's partial summary judgment.

DATED this 10th 25 day of September, 2013.

VIETH LAW OFFICES, CHTD.

NICOLAS V. VIETH
Attorney for Jeffrey Reid
and Sandra Snyder-Reid

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ~~10th~~ 25 day of September, 2013, a true and correct copy of the foregoing document was served upon the following by the method indicated:

Jamila Holmes Civil Deputy Prosecutor PO Box C9000 Coeur d' Alene ID 83816-9000	_X_ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail ____ Facsimile (208-446-1621)
Sheryl S. Phillabaum Phillabaum, Ledlin, Matthews & Sheldon, PLLC 1235 North Post Street, Suite 100 Spokane WA 99201	____ U.S. Mail, Postage Prepaid ____ Hand Delivery _X_ Overnight Mail ____ Facsimile (509-625-1909)

NICOLAS V. VIETH